IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 125 of 1999()

ST.177/1997 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD

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APPELLANT: COMPLAINANT

RAJAN, S/O. KRISHNAN,
HOUSE NO.26/479.
ERUMAKKARA STREET,
YOKKARA AMSOM,
PALAKKAD TALUK.

BY ADV. SRI.C.P.RAVIKUMAR

RESPONDENTS:

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1. **HARIDAS, MANICKAM PILLAI,**
   HOUSE NO. 28/403, VITHUNI STREET,
   NURANI, PALAKKAD TALUK.

2. **STATE OF KERALA, REP.BY**
   THE DIRECTOR GENERAL OF PUBLIC
   PROSECUTION, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.T.M.SUNIL
SRI.A.R.GANGADAS
PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 125 of 1999

Dated this the 21st day of February, 2007

Judgment

This appeal is filed by the complainant against acquittal of the accused under section 256 (1) of the Code of Criminal Procedure. The complaint was filed for dishonour of cheque on the ground of insufficiency of funds. Accused entered appearance and bail was granted. Appellant was examined as PW1 and Exts.P1 to P5 were marked. Appellant was present on subsequent dates also, but, he was not cross-examined. On one day, when the appellant went for certain religious ceremonies, he filed an application for exemption. That was rejected and accused was acquitted under section 256 of the Code of Criminal Procedure for absence of the complainant. I am of the opinion that even though the trial court has got power to acquit the accused for absence of the complainant, it cannot be done mechanically. In this case, evidence have started and complainant was present on earlier postings. He was absent on one day, that too, with application for exemption and, therefore, dismissal of the complaint on that day was too hasty and hence without expressing any opinion regarding the merits of the matter, I set aside the impugned order and remand the matter for continuing the

case. Parties shall appear before the trial court on 26.3.2007.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.125 of 1999

Judgment

21-2-2007